

Buffalo Tank Corporation of Delaware and International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers, Local 35, AFL-CIO. Case 5-CA-22957

April 26, 1993

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS OVIATT
AND RAUDABAUGH

Upon a charge filed by International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers, Local 35, AFL-CIO, the Union, on September 1, 1992, the General Counsel of the National Labor Relations Board issued a complaint on November 30, 1992, against Buffalo Tank Corporation of Delaware, the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent failed to file an answer.

On March 29, 1993, the General Counsel filed a Motion for Summary Judgment with the Board. On March 31, 1993, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. The complaint states that unless an answer is filed within 14 days of service, "all the allegations in the complaint shall be considered to be admitted to be true and shall be so found by the Board." Further, the undisputed allegations in the Motion for Summary Judgment disclose that the counsel for the General Counsel, by letter dated January 15, 1993, notified the Respondent that unless an answer was received by January 29, 1993, a Motion for Summary Judgment would be filed. To date, no answer has been filed nor has Respondent requested an additional extension of time in which to do so.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a Delaware corporation with an office and place of business in Baltimore, Maryland, has been engaged in the fabrication, installation, and sale of metal tanks to commercial establishments. During the 12-month period beginning September 1, 1991, a representative period, the Respondent, in conducting its business operations, purchased and received at its Baltimore, Maryland facility steel and other supplies valued in excess of \$50,000 which were shipped directly from suppliers located outside the State of Maryland, and sold and shipped tanks valued in excess of \$50,000 from its Baltimore, Maryland facility directly to customers located outside the State of Maryland. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The following employees of Respondent (the unit), constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All production and maintenance employees employed by Respondent at its Baltimore, Maryland facility excluding executives, office clerical employees, guards and supervisors as defined in the Act.

Since sometime prior to October 14, 1986, the exact date being unknown, and at all times material herein, the Union has been the designated exclusive collective-bargaining representative of the unit and since that date the Union has been recognized as such representative by the Respondent. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective by its terms for the period September 1, 1989, through September 30, 1993.

Since sometime prior to October 14, 1986, the exact date being unknown, the Union, by virtue of Section 9(a) of the Act, has been, and is the exclusive collective-bargaining representative of the unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

The current collective-bargaining agreement provides, inter alia:

(a) In appendix 2, section 2, for mandatory monthly contributions by the Respondent and optional contribu-

tions by the Respondent's employees toward pension and savings plans.

(b) In article IX thereof, for vacation pay and vacation allowances in lieu of vacation time taken.

(c) In article XVI thereof, for severance allowances.

(d) In appendix 2, section 1, thereof, for life and medical insurance, the cost of which is to be born equally by the Respondent and its employees.

By letters issued February 11 and March 19, 1992, the Respondent, acting through its agent Ruth R. Bowers, reaffirmed its contractual commitment to make monthly contributions to the pension and savings plan referred to above.

The Respondent has failed to continue in full effect the terms and conditions of the 1989-1993 agreement described above in the following respects:

(a) Since on or about February 11, 1992, the Respondent has failed to make its savings and pension contributions and to process savings contributions of unit employees and/or has failed to take these actions in a timely manner as required by appendix 2, section 2.

(b) Since on or about September 1, 1992, the Respondent has failed to make vacation payments and to pay vacation allowances to unit employees qualified for them under the terms of article IX.

(c) Since March 1, 1992, the Respondent has failed to pay severance allowances to unit employees qualified for them under the terms of article XVI.

(d) Since on or about September 1, 1992, the Respondent has failed to provide life and medical insurance coverage to unit employees as required by appendix 2, section 1.

The subjects described above relate to wages, hours, and other terms and conditions of employment of unit employees and are mandatory subjects for the purposes of collective bargaining, and the Respondent engaged in the conduct described above without prior notice to the Union and without affording the Union an opportunity to negotiate and bargain with respect to that conduct.

CONCLUSION OF LAW

By the conduct described above the Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 8(d) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifi-

cally, having found that the Respondent has violated Section 8(a)(5) and (1) by failing since February 11, 1992, to make contractually required savings and pension contributions and process the savings contributions in a timely manner as required by appendix 2, section 2; failing since September 1, 1992, to make vacation payments and pay the vacation allowances to those qualified under the terms of article IX; failing since March 1, 1992, to pay severance allowances to those qualified under the terms of article XVI; and failing since September 1, 1992, to provide life and medical insurance coverage as required by appendix 2, section 1, we shall order the Respondent to make whole its unit employees by making all payments that have not been made and that would have been made but for the Respondent's unlawful failure to make them, including any additional amounts applicable to such delinquent payments as determined in accordance with the criteria set forth in *Merryweather Optical Co.*, 240 NLRB 1213 (1979). In addition, the Respondent shall reimburse unit employees for any expenses ensuing from its failure to make such required payments, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enf. mem. 661 F.2d 940 (9th Cir. 1981), such amounts to be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enf. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

ORDER

The National Labor Relations Board orders that the Respondent, Buffalo Tank Corporation of Delaware, Baltimore, Maryland, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing to continue in full effect the terms and conditions of its 1989-1993 agreement with International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers, Local 35, AFL-CIO in the unit described below by failing to make savings and pension contributions and to process savings contributions of unit employees and/or failing to take these actions in a timely manner as required by appendix 2, section 2; failing to make vacation payments and to pay vacation allowances to unit employees qualified for them under the terms of article IX; failing to pay severance allowances to unit employees qualified for them under the terms of article XVI; and failing to provide life and medical insurance coverage to unit employees as required by appendix 2, section 1 of the agreement:

All production and maintenance employees employed by Respondent at its Baltimore, Maryland facility excluding executives, office clerical em-

employees, guards and supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Abide by the terms of the 1989-1993 collective-bargaining agreement by making and processing savings and pension contributions in a timely manner as required by appendix 2, section 2, making vacation payments and paying vacation allowances to unit employees under the terms of article IX, paying severance allowances to unit employees under the terms of article XVI, and providing life and medical insurance coverage to unit employees as required by appendix 2, section 1 of the agreement.

(b) Make whole the unit employees for any loss of wages and benefits or other expenses suffered as a result of its failure to abide by the terms of the 1989-1993 collective-bargaining agreement, in the manner set forth in the remedy section of this decision.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, time-cards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its facility in Baltimore, Maryland, copies of the attached notice marked "Appendix."¹ Copies of the notice, on forms provided by the Regional Director for Region 5, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

¹ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail to continue in full effect the terms and conditions of our 1989-1993 agreement with International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers, Local 35, AFL-CIO in the unit described below by failing to make savings and pension contributions and to process savings contributions of unit employees and/or failing to take these actions in a timely manner as required by appendix 2, section 2; failing to make vacation payments and to pay vacation allowances to unit employees qualified for them under the terms of article IX; failing to pay severance allowances to unit employees qualified for them under the terms of article XVI; and failing to provide life and medical insurance coverage to unit employees as required by appendix 2, section 1 of the agreement:

All production and maintenance employees employed by us at our Baltimore, Maryland facility excluding executives, office clerical employees, guards and supervisors as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL abide by the terms of our 1989-1993 collective-bargaining agreement by making and processing savings and pension contributions in a timely manner as required by appendix 2, section 2, making vacation payments and paying vacation allowances to unit employees under the terms of article IX, paying severance allowances to unit employees under the terms of article XVI, and providing life and medical insurance coverage to unit employees as required by appendix 2, section 1 of the agreement.

WE WILL make whole the unit employees for any loss of wages and benefits or other expenses suffered as a result of our failure to abide by the terms of our 1989-1993 collective-bargaining agreement in the above respects.

BUFFALO TANK CORPORATION OF
DELAWARE